

## APPENDIX D

### State/Federal Endangered Species Act Commitments

#### Federal Regulatory Commitment

For the first four years of Stage 1, there will be no reductions in CVP or SWP Delta exports, beyond the baseline, resulting from measures to protect fish under the federal Endangered Species Act. In addition to the measures in the baseline and operational measures that do not reduce deliveries to users (Tier 1), the Services (FWS and NMFS) will use the EWA assets, in concert with the ERP (Tier 2), to provide for the protection and contribute to the recovery of fish. In the event the Services determine, based on consideration of available information and the views of an independent science panel, that additional assets are required to prevent take exceeding the take limits in the biological opinion that would likely result in jeopardy or any other cause that would likely result in jeopardy, the CALFED agencies will commit to provide the required assets (Tier 3), without reducing deliveries to Project water users. Tier 3 assets may include purchases from willing sellers or consensual "borrowing" of water (beyond assets borrowed in the implementation of the EWA).

The commitment will be included in the proposed action analyzed in the Services' biological opinions regarding listed and proposed fish species and will support a no-jeopardy finding for those species. The no-jeopardy finding in turn will rest upon the Services' determination that the combination of assets in the baseline, the EWA and ERP, and if needed the third tier of additional assets are of sufficient magnitude and certainty to support the no-jeopardy finding for the four-year period. The same commitment will apply to any fish species subsequently listed during the first four years of Stage 1, which will be the subject of reinitiated consultation required by regulation. The commitment will remain in effect conditioned upon assured funding and the availability of the assets upon which the commitment is based.

As required by law, the only exception to this commitment would arise in the extremely unlikely event that, despite the utilization of all the measures available in the three tiers, a determination is made that a situation of jeopardy to a listed species nevertheless is likely. In that case, the Projects would be obligated to reinitiate consultation (as required by the reinitiation regulations). Only if the Service concludes in its biological opinion that jeopardy is likely despite the utilization of all the measures available in the three tiers and of all additional measures available through the use of the resources of the CALFED agencies that would not reduce deliveries to project water users, would the Projects potentially be required to reduce deliveries. In that event, the reductions would be the minimum required to avoid jeopardy. In issuing its opinion, the Service would consider all available information, including the views of the independent science panel, and would specifically address the views of the panel.

The initial regulatory commitment (for four years) would be extended in a revision to the biological opinion containing the initial commitment. The Services would evaluate the adequacy of the assets that have been and will be available to provide for the protection and recovery of fish for the remaining three years of Stage 1. Upon a determination (which will be set forth in the revised opinion) that the assets are sufficient, the commitment will be extended. The Services will conduct the evaluation and complete the revisions to the biological opinions no later than 90 days prior to the end of the initial four-year commitment period. It is anticipated that satisfactory progress in carrying out the CALFED program, and in particular the aspects of the Program which will result in assets to be shared for environmental and water delivery purposes, will provide an adequate basis for extension of the commitment.

### State Regulatory Commitment

The Resources Agency will provide commitment that for the first four years of Stage 1, there will be no reductions, beyond existing regulatory levels, in deliveries to state and federal project water users resulting from measures to protect fish under the California Endangered Species Act. This commitment will be based on the fishery benefits of existing federal regulation, the assets in the Environmental Water Account, the benefits of the Ecosystem Restoration Program, and the commitment and ability of the CALFED agencies to make additional water available should it be needed. The commitment is intended, subject to legal requirements, to provide certainty and stability to water users in the initial period of Stage 1. It will be in effect for four years based on the assets available in that period. It is anticipated that sufficient assets, either from existing sources or from supply augmentation, will be available for the protection of fish beyond the first four years, and that the commitment will be extended.